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No. 206

In the Supreme Court of the United States

OCTOBER TERM, 1968

CONTINENTAL OIL CO., APPELLANT

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

MOTION TO AFFIRM

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Pursuant to Rule 16(1)(c) of the Rules of this Court, the United States moves that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from the judgment of the district court (J.S. 9a–10a) holding that the acquisition by appellant of an independent oil refining company violated Section 7 of the Clayton Act, and directing divestiture.

In May 1959, Continental Oil Company ("Continental") acquired most of the assets and business of Malco Refineries, Inc. ("Malco"), including Malco's sole petroleum refinery, located in Artesia, New Mexico (GX–

49, pp. 1–2, 4–5, 8; GX–50). On May 16, 1961, the United States filed a complaint alleging that the acquisition violated Section 7 of the Clayton Act because its effect might be to lessen competition substantially or tend to create a monopoly in the sale of gasoline in New Mexico. The district court granted Continental's motion for summary judgment in September 1963, but on May 4, 1964, this Court summarily reversed and remanded the case for trial on the merits. *United States* v. *Continental Oil Co.*, 377 U.S. 161. On September 20, 1965, after trial, the district court entered a judgment dismissing the government's complaint, holding, *inter alia,* that New Mexico was not a proper geographic market in which to test the effects of the acquisition (J.S. 14a, 26a). On May 29, 1957, this Court vacated the judgment and remanded the case "for further consideration in light of *United States* v. *Pabst Brewing Co.*, 384 U.S. 546." *United States* v. *Continental Oil Co.*, 387 U.S. 424. On remand, appellant having conceded that New Mexico is a relevant geographic market (J.S. 5), the district court held that the acquisition substantially lessened competition in the marketing of gasoline in that State and therefore violated Section 7 of the Clayton Act (J.S. 1a–10a, 13a–14a).

A. THE MERGING COMPANIES

Continental is a major fully-integrated oil company engaged in the business of gathering and refining crude oil and marketing gasoline under its "Conoco" brand in 35 States. Prior to the acquisition, Continen-

tal was the eighth largest producer of domestic crude oil, the twelfth largest oil company in terms of net assets (approximately $788 million) and sales (approximately $597 million) and the fourteenth largest domestic refiner. It maintained a network of 700 jobbers and distributors and 8,150 service stations located throughout the Rocky Mountains, the north-central, southwestern and southeastern States (3d Stip.).

Continental owned one refinery in New Mexico, which had a daily capacity of 4,000 barrels of oil (1st Stip.). Continental supplied 11.76 percent of all gasoline sold in New Mexico and was the fifth largest seller there (GX 68a; Table 1, *infra,* p. 19; 1st Stip. ¶¶ 1, 10, 11, and 12). If sales to other refiners are excluded, Continental accounted for about 10 percent of all New Mexico sales and was the fourth largest seller there (GX 69; Table 2, *infra,* p. 19; 1st Stip. ¶¶ 1, 10, 11. and 12).[1]

Prior to the acquisition, Malco was a local, not fully integrated, independent oil company which owned one refinery (3d Stip., ¶¶ 10–11). That refinery had a daily capacity of 11,500 barrels and was located in Artesia, adjacent to Continental's New Mexico refinery. Gasoline from the Malco refinery was distributed by approximately 60 jobbers and distributors and 175 retailers in New Mexico, eastern Arizona, and El Paso County, Texas (1st Stip., ¶¶ 17–18). Malco's gasoline was sold at retail under the brands "Malco," "Nu-Mex" and "Valley" as well as

[1] See notes 4, 7, *infra.*

on a rebranded basis,[2] at prices lower than those charged for major-branded gasoline such as "Conoco" (Tr. 915–916, 1263). Malco supplied 12.61 percent of all gasoline sold in New Mexico and was the third largest seller in New Mexico (GX 68a; Table 1, *infra*, p. 19; 1st Stip., ¶¶ 1, 10, 11, 12). Excluding sales to other refiners, Malco accounted for 6.74 percent of all New Mexico sales and was the seventh largest seller there (GX 69; Table 2, *infra*, p. 19; 1st Stip., ¶¶ 1, 10, 11, 12).[3]

B. CONCENTRATION IN THE NEW MEXICO MARKET

Each company that supplies more than 5 percent of the gasoline sold in New Mexico has refining facilities located either in New Mexico or on a pipeline serving New Mexico. It is difficult to sell gasoline in New Mexico from refineries less advantageously located because the cost of transporting oil is far greater by truck than by pipe. (Tr. 1575, cf. Tr. 795, 1492.)

The largest firm in the New Mexico gasoline market accounts for 17.09 percent of total gasoline sales, the four largest firms account for 54.89 percent of all sales, and the eight largest firms (the smallest of which sells only 3.06 percent of the total) account for 86.69 percent of all sales (GX 68a; Table 1, *infra*, p. 19). If inter-refiner sales are excluded from total

[2] "Rebranded" gasoline is gasoline sold to independent distributors who sell it under their own brand names.

[3] Some refiners, such as Malco, sold substantial amounts of gasoline to other refiners for distribution through the other refiners' marketing systems.

sales, the largest firm accounts for 17.15 percent of all gasoline sales, the four largest firms for 48.38 percent, and the eight largest for 76.30 percent of all sales (GX 69; GX 174; Table 2, *infra,* p. 19).

In terms of New Mexico sales, Continental's acquisition of Malco combined the third largest seller with 12.61 percent of the market (Malco) and the fifth largest seller with 11.76 percent of the market (Continental). Continental thus became the largest seller, with 24.37 percent of the market. The total market share of the four largest firms was increased from 54.89 percent to 66.65 percent (GX 68a, Table 1, *infra,* p. 19). If sales to other refiners are excluded, the acquisition combined Continental, the fourth largest seller with about 9.6 percent of the market, and Malco, the seventh largest seller with about 6.7 percent of the market, and established Continental as the second largest seller with more than 16 percent of the market. The total market share of the four largest sellers was increased from 48.38 percent to 54.58 percent (GX 69; GX 174; Table 2, *infra,* p. 19).[4]

[4] There are very minor discrepancies between the stipulated market share figures (1st Stip., ¶1) and other market-share figures introduced by the government (see GX 68a). The latter have been used throughout this motion to affirm because they are more complete. The district court recognized that the differences were so slight as to have no substantial effect on the relevant market shares, or the increase in Continental's market control (J.S. 4a, 8a, 10a, 17a).

C. THE ECONOMIC SIGNIFICANCE OF THE INDEPENDENT REFINERS

Of the 378 million gallons of gasoline sold in New Mexico in 1958, 250 million were sold by major, integrated oil companies while 128 million, or 35 percent, were supplied by independent refiners (1st Stip., ¶ 1, p. 1; GX 68a). The government's expert witness, Dr. DeChazeau, testified that major oil companies tend to concentrate upon competition in terms of quality and service rather than price (Tr. 426–427, 469). He stated that because each major company believes that any price-cut would be followed by its competitors and would lead to a fall in total revenue, the major companies try to avoid price competition and their retail prices tend to be rigid (Tr. 426–427); and because they wish to protect their brand names, major refiners ordinarily will not sell gasoline to independent distributors who supply retailers selling gasoline at discount under brand names not nationally advertised (Tr. 438–439).[5]

He further testified that independent refiners tend to rely on price as their principal competitive weapon, for they cannot afford to pay for the advertising neces-

[5] Four major oil companies sold significant amounts of their own gasoline in New Mexico: Texaco, Continental, Phillips and Standard of Texas (Sotex). Texaco, Continental and Phillips did not, prior to the acquisition of Malco, sell any substantial quantity of gasoline to independent marketers in New Mexico. 1st Stip., ¶ 2d (Texaco), ¶ 12; Tr. 591 (Continental), GX 77a (Phillips). The record is less complete as to Sotex, but it establishes at least a prima facie case that Sotex followed a policy similar to that of Phillips, and the record contains no evidence that Sotex sold significant amounts of gasoline to independent marketers. See GX 148a; Tr. 438, 1490–1491, 1546, 1550, 1610; but see Tr. 1149, 1328.

sary to create a demand for their brand; and that they generally sell at prices below those charged by the major-brand refiners. Dr. DeChazeau concluded that the "tendency towards non-price competition * * * has been held in check * * * by the existence of a fringe of independents who * * * [can] cut price[s] and, therefore, tend to hold price levels down." (Tr. 443.)

Dr. DeChazeau's conclusions were disputed to a limited extent by Dr. Boatwright, an expert witness for Continental. Dr. Boatwright testified that he did not believe that any clear line divided oil companies into majors, spurning price competition, and independents, competing in price. While the court did not specifically resolve this disagreement, it seemed to accept Dr. DeChazeau's views, stating (J.S. 23a):

> * * * [T]he price of some gasoline may include service as well as quality. On the other hand, some stations cut the price and do not give service or quality. * * * It was developed that there was a differential in the price of gasoline sold by major companies and independent companies * * *.

Prior to the acquisition, Continental, like other major companies, refused to sell gasoline to rebranding retailers (Tr. 1453), preferring to sell under its own brand name (Tr. 1275–1276) or, if necessary, to other major brand firms. If a surplus appeared likely, Continental, like other major oil companies, commonly followed the practice of either adjusting its output or exchanging gasoline with other major companies,

rather than allowing its gasoline to be sold under independent brand names. (Tr. 438, 614–615).

Malco, on the other hand, concentrated on the sale of its product without reference to brands (Tr. 428). Malco's jobbers and distributors were allowed to sell to whomever they pleased and to determine their resale prices (Tr. 881, 915; GX 20). Prior to the merger, Malco was the third largest independent refiner serving New Mexico and supplied 19.3 percent of the gasoline sold by independent jobbers, distributors and retailers in New Mexico (GX 69, Table 4, *infra*, p. 20). El Paso Natural Gas Products Co., which has since been acquired by a major oil company, Shell (Tr. 266, 433, 948, 1785), supplied another 27.6 percent, and Shamrock Oil & Gas Co. supplied 19.5 percent of all independent gasoline. The remaining eleven independent refiners furnished only one-third of the independent gasoline sold in New Mexico (GX 69; Table 4, *infra*, p. 20).

ARGUMENT

1. The framers of the 1950 amendments to section 7 of the Clayton Act expressed particular concern with "oligopoly," the condition in which most of the business in a market is controlled by a few firms (S. Rep. 1775, 81st Cong., 2d Sess., p. 5). Theory and experience both teach that when a market becomes highly concentrated or oligopolistic in structure, the intensity and effectiveness of competition—and price competition in particular—are likely to diminish. In such a market each of the major sellers has such a significant share that a price cut by one cannot be ignored by the others, but must immediately be matched.

Price cutting therefore does not pay, and tends to be avoided; "parallel policies of mutual advantage, not competition, will emerge." *United States* v. *Aluminum Co. of America,* 377 U.S. 271, 280.

In order to carry out the congressional purpose of protecting competition by preventing such economic concentration, this Court, in *United States* v. *Philadelphia National Bank,* 374 U.S. 321, held that a merger is presumptively illegal under Section 7 when it (1) produces a firm that has "an undue percentage share of the relevant market" and (2) "results in a significant increase in the concentration of firms in that market" (374 U.S. at 363). The acquisition involved in *Philadelphia National Bank* produced a firm controlling 30 percent of the relevant market. In *United States* v. *Pabst Brewing Co., supra, this Court held that an* acquisition resulting in control of 24 percent of the Wisconsin market, 11.3 percent of a three-state market and 4.5 percent of national sales, when viewed against a background of a trend toward industry concentration, established a violation of section 7 in each and all of those areas. Similarly, the acquisition in *United States* v. *Von's Grocery Co.,* 384 U.S. 270, which produced a firm whose sales accounted for 7.5 percent of the Los Angeles retail grocery market, was declared unlawful. In the present case the increase in Continental's market share and the correlative increase in concentration among suppliers of gasoline to New Mexico invalidate the merger under the tests established by those cases.

The merger significantly increased concentration among New Mexico suppliers.[6] It united the third and fifth largest sellers, made Continental the largest seller with 24.37 percent of the market, and increased concentration among the first four firms from 54.89 percent to 66.65 percent (GX 68(a); table 1, *infra*, p. 19). If inter-refinery sales are excluded, this acquisition still is well within the tests of *Von's*, *Pabst* and *Philadelphia National Bank*.[7] It joined the fourth and seventh firms, raised Continental's position from fourth with 9.66 percent of the market to second with more than 16 percent and increased concentration among the first four firms from 47.73 percent to 54.58 percent (GX 69; GX 174; Table 2, *infra*, p. 19).

Contrary to appellant's contention (J.S. 21–23), it was proper to measure the effects of this merger in terms of market shares. If anything, for reasons discussed below, pp. 12–15, the market shares understate the gravity of the anticompetitive effects. The potential injury to consumers from increased concentration at the refining level is not diminished by the fact that some refiners (such as Continental) are integrated into distribution and others (such as Malco) sell to independent distributors. The structure of the

[6] Sales figures for firms selling in New Mexico are provided in Tables 1 and 2 (Appendix, *infra*, p. 19).

[7] Although we believe that market figures including such inter-refiner sales are appropriate to determine the concentration produced at the refinery level by this acquisition, the illegality of the acquisition is apparent even when such sales are excluded. The volume of Malco's sales to other refiners does not, however, bear directly upon Malco's special importance as a supplier of independent marketers (see pp. 12–15, *infra*).

industry at the refining level will affect the pricing decisions of refiners, and, therefore, ultimately of distributors, regardless of whether some firms are integrated into distribution as well.

Nor do concentration figures based on sales overstate the importance of Continental and Malco in the New Mexico market. It is true that because some of the other firms selling in New Mexico have large refining capacities located on New Mexico pipelines, they could increase their New Mexico sales by diverting gasoline from other markets. However, most of the capacity not now being used to produce gasoline for sales in New Mexico is being used to produce gasoline for sales in other markets (See Tr. 466–467, 1676),[8] and both the government's expert and defendant's expert testified that capacity used to produce gasoline sold in other markets could not be treated as capacity available to serve New Mexico (Tr. 466–467, 1676). Insofar as refining capacity is used to produce gasoline committed to other markets, considering such capacity in measuring concentration would overstate the amount of gasoline likely to enter the New Mexico market. Moreover, all of the refining capacity in New Mexico or on New Mexico pipelines is owned by firms already selling significant amounts of gasoline in that State. Those firms have little, if any, incentive to try, through price competition (or by other means that may induce price competition), to introduce more gasoline into New Mexico if each of them

[8] Less than 20 percent of total capacity is unused (CON X 161).

can, instead, benefit from an oligopolistic price structure.

2. The anticompetitive effects of this acquisition are even more substantial than is indicated by the impressive concentration figures, because of the elimination of Malco as an independent supplier of gasoline to independent jobbers and distributors in the New Mexico market. As we have pointed out (see pp. 6–7, *supra*), the record indicates that the major oil companies compete more in terms of advertising and services than in price. Independent gasoline companies, on the other hand, concentrate on price competition. The independent companies are therefore an important factor in keeping gasoline prices low, for their presence in a market limits the power of the major companies to set higher than competitive prices.

The elimination of Malco as an independent refiner is likely to restrict the supply of gasoline available to independent distributors in New Mexico. In 1958 six firms sold significant amounts of gasoline to independent distributors in that State. Three of them (El Paso, Shamrock, and Malco) accounted for 66.4 percent of all such sales. El Paso accounted for 27.6 percent, Shamrock for about 19.5 percent and Malco for 19.3 percent (see Table 4, *infra*, p. 20). Moreover, prior to the acquisition, only six independent refineries were able economically to supply significant amounts of gasoline to New Mexico.[9] Of those six companies,

[9] Only five independent firms selling significant amounts of gasoline in New Mexico owned refineries located in New Mexico or on New Mexico pipelines. A sixth independent firm, Cosden, shipped gasoline to New Mexico by truck.

three accounted for 91.0 percent of the total independent refining capacity. Shamrock accounted for 38.2 percent, El Paso for 35.2 percent, and Malco for 17.6 percent (see Table 5, *infra*, p. 20). Thus, by acquiring Malco and eliminating it as an independent supplier of gasoline to independent distributors, Continental has eliminated an independent source accounting for nearly 20 percent of all sales to independent distributors and more than 17 percent of the independent capacity that might economically be used to supply independent distributors.

The anticompetitive effect of the merger is further increased because El Paso, an independent refiner even larger than Malco, has been acquired by Shell, a major oil company (Tr. 433). The cumulative effect of these two mergers is to reduce from six to four the number of independent refiners selling more than insubstantial amounts of gasoline in New Mexico, and to eliminate 52.8 percent of the independent refining capacity that had been available in 1958 (see Table 5, *infra*, p. 20). Unless the major companies significantly increase their sales to independent distributors—and the record indicates that this is improbable (see *supra*, p. 6)—Continental's acquisition of Malco is likely either to make it more difficult for independent refiners to buy all the gasoline they require, or to increase significantly the price they have to pay for it. Cf. *United States* v. *Aluminum of America*, *supra*, 377 U.S. at 280–281. Indeed, the record shows that, both before and after the acquisition, some independent distributors experienced dif-

ficulty in obtaining adequate supplies of gasoline (Tr. 1117–1118, 1120, 1550, 1878–1879).

Contrary to appellant's suggestion (J.S. 19–21), the anticompetitive effects of the acquisition were not cured by the fact that Continental, just before the trial began, divested itself of certain marketing properties,[10] created an independent distributing organization to service independent dealers formerly supplied by Malco (J.S. 22a, 24a), and agreed to supply that organization with a limited supply of gasoline for a limited period of time (Tr. 10–12; Con X 154). Not only is there no basis in law for appellant's assumption that such devices could ever be used to immunize from judicial relief an acquisition that otherwise violated Section 7, but it is clear on this record that Continental's supply agreement is not an adequate competitive substitute for Malco's presence as an independent refiner. First, Continental is obliged to supply gasoline to the independent company only for ten years; there is no assurance that, at the end of that time, Continental's historic reluctance to supply independents will not reassert itself. Second, during the life of the supply agreement Continental is required to furnish the independent company in any year only 3 percent more gasoline than the company bought from Continental in the prior year (CON X

[10] The acquired marketing assets divested by Continental on the opening day of trial constituted only 1.8 percent of the value of the acquisition, and consisted of five service stations, office equipment, trucks, signs, marketing equipment, and the right to use the name "Malco" (CON X 64, 152–155; GX 49, 50, 161).

154, p. 2). Thus, if demand falls in one year, the marketing company may be seriously restricted in the amount it can buy from Continental in succeeding years. Moreover, the marketing company is in some measure restrained from shifting purchases from Continental temporarily, lest its assured source of supply be reduced *pro tanto* for future years.

3. This Court has stated that, in exceptional circumstances where certain mitigating factors exist, an otherwise illegal acquisition may be permitted. Such factors have been stated to be "business failure or the inadequate resources of one of the parties that may have prevented it from maintaining its competitive position [or] a demonstrated need for combination to enable small companies to enter into a more meaningful competition with those dominating the relevant markets." *Brown Shoe Co.* v. *United States,* 370 U.S. 294, 346. The record refutes appellant's argument that there are present here any such "mitigating factors" which justify the acquisition. It is therefore immaterial that the district court apparently misinterpreted this Court's opinion in *United States* v. *Von's Grocery Co., supra,* as rejecting *Brown Shoe*'s recognition that particular acquisitions can be justified by such "mitigating factors" (see J.S. 3a).

Malco was plainly not a "failing company." See *International Shoe Co.* v. *Federal Trade Commission,* 280 U.S. 291.[11] The company was on a sound financial

[11] Congress, in amending the Clayton Act, approved this Court's holding in *International Shoe* that to fall within the failing company exception, a company "not * * * actually in a state of bankruptcy" must be "heading in that direction with the probability that bankruptcy will ensue." S. Rep. No. 1775,

basis, and had operated profitably throughout its existence (1st Stip. ¶ 20; Tr. 817, 845, 867–870; 989; GX–20). Although its profits had declined in the two years preceding the acquisition, other major oil companies operating in the New Mexico market, including Continental, had a similar experience. After the acquisition in 1959, Malco's earnings increased steadily since 1960 (GX–20; GX–182). Malco never sold gasoline at distress prices (Tr. 1004). Its decrease in gasoline sales did not result from an inability to market its product (Tr. 1005).

Malco's owner testified that the company was prepared to continue to compete if the properties had not been sold (Tr. 772, 776–778). Construction of a new alkalization unit at the refinery was completed in 1958, prior to the acquisition, at a cost of $1,500,000 (Tr. 765). As late as April 1959, a month before the acquisition, Malco contracted to buy four service stations to experiment with the possibility of operating its own retail outlets (Tr. 776–778).

Nor can Continental properly claim that it was a small company which needed the acquisition in order to compete more meaningfully with dominant firms. Continental was a major, integrated oil company that had been in the New Mexico market for more than fifty years; its Conoco brand gasoline had a strong market position and good public acceptance. It had a substantial investment in marketing properties in the

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81st Cong., 2d Sess., p. 7 (1950); H. Rep. No. 1191, 81st Cong., 1st Sess., p. 6 (1949); 96 Cong. Rec. 16435 (remarks of Senator O'Conor); 96 Cong. Rec. 16444 (remarks of Senator Thye).

State and extensive crude oil holdings adjacent to the refinery. New Mexico had been a profitable marketing area for Continental, and it had a large market share. The opportunity for future growth and return on investments was considered good. (GX–31–32, 36, 37, 38.) Continental had the advantage of a crude oil supply near the Artesia refinery and was expecting substantially increased oil production. It was advantageous for Continental to utilize as much of its New Mexico crude oil as possible in refining operations in that State, since a tax penalty would be incurred if the crude oil were shipped outside of the State. Continental had a favorable location in Artesia to supply products to other major oil companies (GX–12, p. 3; GX–42).

Understandably, then, Continental was not considering withdrawal from the New Mexico market (GX–4, 6, 14; Tr. 634–635). Although the company's Artesia refinery was nearing obsolescence, with an estimated life expectancy of two or three years, it had several alternatives to the acquisition of the Malco properties. These included obtaining supplies through exchange or processing agreements, or purchases, from other refineries; modernization and upgrading of the Artesia refinery; and construction of a new refinery at another location (see GX–4, 6, 11, 39, 42). Continental's management, after weighing these alternatives, chose the Malco acquisition not as a matter of economic necessity, but because it was the most attractive business proposition at the lowest cost (Tr. 583–584).

On this record, appellant has failed to show any "mitigating factor," within the meaning of *Brown Shoe, supra,* which might serve to avoid the normal applicability of the Clayton Act to a merger with this demonstrated anticompetitive impact on the New Mexico market.

CONCLUSION

For the reasons stated, the judgment of the district court should be affirmed.

Respectfully submitted.

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APPENDIX

STATISTICAL DATA

TABLE 1.—*Total Sales of Gasoline in New Mexico (1958) (including net inter-refiner sales*)*

Rank	Refining Company	Gallons	Percentage of Total Sales
1	Sotex	64, 694, 933	17. 09
2	El Paso	48, 735, 298	12. 88
3	Malco	47, 717, 766	12. 61
4	Texaco	46, 603, 977	12. 31
5	Continental	44, 513, 774	11. 76
6	Phillips	36, 551, 961	9. 66
7	Shamrock	27, 689, 352	7. 32
**8	Cosden	11, 592, 317	3. 06
9	Famariss	10, 382, 409	2. 74
10	Gulf	6, 099, 185	1. 61
	Others	33, 914, 353	8. 96

*Net inter-refiner sales are sales to other refiners less purchases from other refiners.

**Cosden is an independent refinery located in Texas off the New Mexico pipeline. It ships gasoline to eastern New Mexico by truck. (See p. 6, *supra*.)

Source: GX 68(a).

TABLE 2.—*Total Sales of Gasoline in New Mexico (1958) (excluding inter-refiner sales)*

Rank	Refining Company	Gallons	Percentage of Total Sales
1	Sotex	64, 906, 784	17. 15
2	Phillips	41, 214, 497	10. 89
3	Texaco	40, 419, 761	10. 68
4	Continental	36, 566, 756	9. 66
5	El Paso	36, 447, 546	9. 63
6	Shamrock	25, 737, 706	6. 80
7	Malco	25, 519, 719	6. 74
†8	Gulf	17, 976, 430	4. 75
†9	Magnolia	17, 573, 990	4. 64
10	Cosden	11, 592, 317	3. 06
†11	Humble	11, 162, 631	2. 95
†12	Sinclair	9, 705, 283	2. 56
13	Famariss	8, 535, 762	2. 26
14	Four States Western	5, 667, 417	1. 50
	Others	25, 468, 726	6. 73

†These companies have no refining facilities in New Mexico or on New Mexico pipelines, but they buy most of the gasoline which they sell in New Mexico from one or more of the other companies listed above.

Source: GX 69.

TABLE 3.—*Refineries Located in New Mexico or on New Mexico Pipelines Ranked According to Refining Capacity*

Rank	Refining Company	Capacity (barrels per day)	Percentage Share of Total Capacity
1	Phillips	71,000	31.1
2	Sotex	53,000	23.2
3	Texaco	35,000	15.3
4	Shamrock	25,000	10.9
5	El Paso	23,000	10.1
6	Malco	11,500	5.0
7	Continental	4,000	1.8
8	Wickett	2,500	1.1
9	Four States	2,000	0.9
10	Famariss	1,380	0.6

Source: Con X 81.

TABLE 4.—*Sales in New Mexico by Independent Refiners Located in New Mexico or on New Mexico Pipelines (1968)*

Rank	Refining Company	Gallons	Percentage of Sales
1	El Paso	36,447,546	27.6
2	Shamrock	25,737,706	19.5
3	Malco	25,519,719	19.3
4	Cosden	11,592,317	8.8
5	Famariss	8,535,762	6.5
6	Four States Western	5,667,417	4.3
*	Others	18,500,000	14.0

*None of the other independent refiners accounts for more than 4% of all sales by independent refineries.

Source: GX 69.

TABLE 5.—*Refining Capacity of Independent Refiners Located in New Mexico or on New Mexico Pipelines*

Rank	Refining Company	Capacity (barrels per day)	Percentage Share of Total Capacity
1	Shamrock	25,000	38.2
2	El Paso	23,000	35.2
3	Malco	11,500	17.6
4	Wickett	2,500	3.8
5	Four States	2,000	3.1
6	Famariss	1,380	2.1

Source: Con X 81.

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